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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 422

MARIO MERCADO E HIJOS, PETITIONER

v.

CLINTON P. ANDERSON, SECRETARY OF AGRICULTURE, UNITED STATES DEPARTMENT OF AGRICULTURE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for Puerto Rico (R. 137–43) is officially reported sub nomine *Porter, Price Administrator* v. *Mercado* in 67 F. Supp. 107. The opinion of the Circuit Court of Appeals for the First Circuit (R. 159–68) is officially reported in 163 F. 2d 303.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered August 25, 1947 (R. 168–9). The petition for a writ of certiorari was filed on October 31, 1947. The jurisdiction of this Court is

invoked under Section 240 (a) of the Judicial Code, as amended, by the Act of February 13, 1925, 28 U. S. C. 347 (a).

QUESTIONS PRESENTED

1. Was the petitioner's molasses "delivered," within the meaning of that term as used in Revised Maximum Price Regulation 183, as amended, when the petitioner deposited it in its own mill tank, or only when it was subsequently removed from that tank by the purchasers?

2. Is a tank situated two miles from a molasses mill, but which is the immediate recipient of the product of the mill, a "mill tank" within the meaning of that term as used in Revised Maximum Price Regulation No. 183?

3. Does Section 205 (d) of the Emergency Price Control Act grant immunity from liability where delivery of a commodity under a contract is in violation of an existing regulation at the time of delivery, notwithstanding the fact that the contract was legal at the time of its execution?

4. Does Section 205 (e) of the Emergency Price Control Act, as amended, grant such immunity where the advice alleged to have been relied upon by the seller was not given by any of the officials designated in the statute, and where the advice was given at a time two and one-half months before the promulgation of the amendment to the regulation which the seller is charged with violating?

5. Does the fact that other persons may have

had an interest in the proceeds resulting from the sale of the molasses by the petitioner preclude recovery of statutory damages from the latter?

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute involved (Emergency Price Control Act of 1942, as amended) and the regulations issued thereunder are set forth in Appendix A, *infra,* pp. 17–22.

STATEMENT

Petitioner owns and operates a large sugar mill in Puerto Rico called "Central Rufina." Destileria Serralles, Inc., hereinafter called "Serralles," operates a distillery in the same place. On March 3, 1944, Serralles entered into a contract with petitioner whereby the former agreed to buy all the petitioner's 1943–44 season's production of blackstrap molasses, estimated at 1,200,000 gallons (less 150,000 gallons retained by petitioner for its own use) at a price of 17 cents per gallon. A copy of the translated contract is set forth in the Appendix B, *infra,* pp. 23–24. The pertinent part of the contract provides that—

> * * * Said molasses becomes the property of the Buyer as soon as produced by the seller, total gallonage to be determined on a basis of 12 pounds of molasses to each gallon.
>
> * * * * *
>
> 3. Delivery shall be made from June to December 15, 1944, and the Buyer binds it-

self to take away the total amount of molasses from the tanks of the Seller before the commencement of the 1944–45 grinding season should the latter commence before December 15. However, it is hereby set forth that at present the Seller has 200,000 gallons of molasses in its tanks, which molasses is hereby transferred to the Buyer immediately, under the same conditions agreed upon above and those which are hereinafter set forth.

* * * * *

6. The Buyer shall take the molasses in the tanks of the Seller, at Rufina Central, at Guayanilla, or at Penoncillo, weighed on the scales of the Seller.

The parties stipulated that 1,250,040 gallons were deposited in the petitioner's Penoncillo tank between March 4 and June 24, 1944 (R. 12–13) and that the molasses was actually withdrawn from this tank by Serralles between September 12, 1944, and December 7, 1944 (R. 13). It was undisputed that no part of the gallonage in the tank was earmarked for Serralles or any other purchaser and that eight separate deliveries, totalling 10,052 gallons were made from the petitioner's tank to purchasers other than Serralles (R. 44, 46–48, 104–111). There was no evidence adduced as to which of the tanks contained the 150,000 gallons retained by the petitioner under the contract or as to when they were withdrawn therefrom.

At the time the contract was entered into, the applicable regulation governing the sale of molasses was Section 2 (a) of the General Maximum Price Regulation, as amended by Section 201 of Supplementary Regulation No. 13. By this regulation the maximum price was established at the highest price charged for the commodity in question "to a purchaser of the same class" during a specified base period, April 10, 1942, to May 10, 1942, inclusive.[1]

On May 4, 1944, the Price Administrator withdrew coverage of the commodity involved here from the General Maximum Price Regulation[2] and issued Amendment No. 32 to Revised Maximum Price Regulation No. 183, adding Section 65 (b) to that regulation by which a "maximum price for cane blackstrap molasses sold or delivered in the Territory of Puerto Rico * * * (b) on or after May 9, 1944 * * * [was fixed at] 13.6¢ per gallon," *infra,* pp. 21–22. Section 17 (3) of Regulation No. 183, *infra,* p. 21, defines the term "to deliver" as follows: "To transfer *actual* possession of the commodity to the purchaser * * *" Section 1 thereof, *infra,* p. 21, provides that "regardless of any contract, agreement, lease, or other obligation or of any price regulation or order heretofore issued by the Office of Price Administration, no person to whom this

[1] 7 F. R. 4798; the regulation was issued June 25, 1942, effective June 26, 1942.

[2] See Section 21 of the General Maximum Price Regulation, *infra*, p. 21, for the effect of such withdrawals.

regulation is applicable shall *sell* or *deliver* * * * any of the commodities set forth in this regulation at a price higher than the maximum prices specified herein." [Italics ours.] A similar prohibition is contained in Sec. 4 (a) of the Act, *infra*, p. 17.

The Price Administrator[3] brought this action on behalf of the United States to recover statutory damages under Section 205 (e) of the Emergency Price Control Act of 1942, as amended, claiming that the legal maximum selling price on the entire gallonage of molasses delivered under the contract was 13.6 cents per gallon, the price fixed by Revised Regulation 183, as amended, and that the overcharge was $42,500.00. The district court, after trial, found that of the total 1,250,040 gallons, 887,985, the amount deposited in the tank prior to May 9, 1944, were neither sold nor delivered in violation of any regulation, and as to that quantity, disallowed any recovery (R. 135–136, 137). The district court found that the remaining 362,055 gallons were delivered at a price above the "dollars and cents" ceiling price of 13.6 cents per gallon prescribed by Revised Maximum Price Regulation 183, as amended, which became effective May 9, 1944, and as to this latter gallonage, allowed a recovery in the amount of the actual overcharge thereon, namely, $12,309.86 (R. 137). The Circuit Court of Appeals reversed the decision

[3] After various substitutions, the Secretary of Agriculture was substituted for the Price Administrator (R. 10, 160, footnote 2).

of the district court, holding that no delivery of the molasses was made until Serralles actually removed the molasses from the tank, at which time Regulation 183, as amended, was in effect. It further held that the district court had improperly considered as irrelevant evidence of the petitioner's direct knowledge of the amendment to the regulation. Accordingly, the Circuit Court of Appeals remanded the case to the district court with directions to enter judgment for at least the sum of $42,500 damages, the amount of the overcharges on the entire gallonage, and to reconsider its finding with respect to the willful conduct of and the proper precautions taken by the petitioners in connection with its decision declining to award the greater damages permitted by Section 205 (e) of the Act.

ARGUMENT

1. The contention of the petitioner that delivery of its molasses was effected when it was deposited in the petitioner's tank, runs counter not only to Section 4 (a) of the Emergency Price Control Act and Revised Maximum Price Regulation No. 183, but also to the contract entered into between the petitioner and Serralles.

Section 4 (a) of the Emergency Price Control Act, *infra*, p. 17, provides that it shall be unlawful to sell or deliver any commodity in violation of any regulation or order issued under the Act, regardless of any contract theretofore or there-

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after entered into. Section 1 of Revised Maximum Price Regulation No. 183, *infra*, p. 21, provides that regardless of any contract or other obligation no person shall sell or deliver any of the commodities covered by the regulation at a price in excess of the maximum prices specified therein, and Section 65 (b) of that regulation, as amended, *infra*, p. 22, provides that the ceiling price on "cane blackstrap molasses shall be 13.6¢ per gallon delivered at the mill or at the mill tank. Section 65 (b), as amended, was in force and effect when the molasses here involved was withdrawn from the petitioner's tank by Serralles. Consequently, the petitioner is not aided by the fact that its contract with Serralles was made and its molasses deposited in its own tank prior to the time Section 65 (b) of RMPR 183, as amended, became effective.[4] It has been judicially held that the Emergency Price Control Act and the regulations made pursuant thereto cut across unexecuted contracts. *Long Island Structural Steel Co.* v. *Schiavone*, 53 F. Supp. 505 (S. D. N .Y.); *In re Kramer & Uchitelle*, 288 N. Y. 467; *Swanee Fabrics* v. *American Bleached Goods Co.*, 178 Misc. (N. Y.) 894.

[4] Our argument assumes, but does not concede, that title to the molasses actually passed upon its deposit in the tank, because more than 10,000 gallons from such tank were delivered to customers other than Serralles in eight separate deliveries (R. 44, 46–47; Exhibits B and C, R. 104–111), and because the record is silent as to when, if ever, the 150,000 gallons reserved by the petitioner from the Serralles contract were withdrawn.

Furthermore, the term "to deliver" is expressly defined in Section 17 (3) of RMPR, *infra*, p. 21, as a transfer of actual possession of the commodity to the purchaser or to any carrier for shipment to the purchaser. This definition is, of course, conclusive.[5] And even without this definition, the use of both terms, "sell" or "deliver", in Section 1 of the regulation is plainly indicative that the delivery contemplated was an actual transfer of possession, as distinguished from a mere constructive transfer. See *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 416; *Bowles* v. *Beucher*, 53 F. Supp. 984, 987 (D. Mass.). It will also be observed that Paragraph 3 of the contract entered into between the petitioner and Serralles, *infra*, pp. 23–24, expressly provided that delivery of the molasses should be made "from June to December 15, 1944", which leaves no doubt that the buyer had no absolute right to take delivery at the time the molasses was deposited in the tank, the only condition being that the buyer should take delivery of the whole before the commencement of the 1944–45 grinding season, should that season commence before December 15. This provision of the contract is plainly inconsistent with any concept that delivery was contemplated at the time of the deposit of the molasses in the

[5] The intent and enforcement of these regulations do not turn upon technical concepts of the law of sales. *United States* v. *Lutz*, 142 F. 2d 985, 989 (C. C. A. 3); cf. *United States* v. *Weiss*, 150 F. 2d 17, 19 (C. C. A. 2).

tank by the petitioner. Thus, the contract is subject to the general rule that delivery consists of a physical transfer of possession, which rule is applicable in Puerto Rico. See *Lopez & Moran* v. *Sobrinos de Ezquiaga,* 34 P. R. Rep. 75; *West India Oil Co.* v. *Bonet,* 54 P. R. Rep. 695.

It is clear, therefore, that the molasses here involved was not delivered, within the meaning of RMPR 183, or of the contract itself, until Serralles actually withdrew it from the petitioner's tank after Section 65 (b), as amended, of that regulation became effective.

2. There is no merit to the petitioner's contentions (Pet. 19–23) that the molasses here involved was not delivered at the mill or the mill tank because the Penoncillo tank was situated two miles from the mill, and that RMPR 183, as amended, was not applicable to such molasses. Concededly, the petitioner owned and controlled the Penoncillo tank and used it as a part of the regular operation of its mill, i. e., as an immediate recipient for large quantities of blackstrap molasses upon its manufacture (R. 12–13, 44, 46–47, 104–111). And the fact that the tank was situated two miles from the mill made it no less a functioning part of that mill.

The term "mill" has long been held to include all facilities in the operation of the particular plant. See *Whitney* v. *Olney,* 29 Fed. Cas. 1108, 1110 (C. C. D. R. I.), wherein Justice Story in construing a testamentary devise of a mill, stated

that "In common sense and in legal interpretation, a mill does not mean merely the building in which the business is carried on, but includes the site, dam, and other things annexed to the freehold, necessary for its beneficial enjoyment." And in *Pellerin* v. *International Cotton Mills,* 248 Fed. 242, 245 (C. C. A. 1), the term mill was defined to include "not only the buildings wherein the 'work' is done, but everything appurtenant to them, as a dam, flume, yard, or ways provided for use by employes." Nor does the fact that a tank is situated a distance from the mill make it any less a part of the mill so long as such tank is, as it was here, a necessary adjunct to the operation of the mill. See *Casey* v. *Barber Asphalt Paving Co.* (C. A. A. 9), 202 Fed. 1, 5, wherein it was held that a mill included a mixer, grinder, and other machinery assembled on a flat car and moved from place to place on ordinary railway tracks according to the needs of a street paving business. Thus, the Penoncillo tank was a part of the petitioner's mill, as that term has been judicially defined, even before Amendment 45 was added to Section 65 (b) of RMPR 183.

In any event, it is clear that the Penoncillo tank was a "mill tank" within the meaning of that term as used in Section 65 (b) of RMPR 183 after Amendment 45 was added thereto. The language of Amendment 45, *infra,* p. 22, which added the phrase "or at the mill tank" to Section 65 (b), leaves no doubt that the term "mill tank"

appearing in that section was used in a sense broad enough to include tanks which were the immediate recipients of molasses from the operation of a mill, even if such tanks might be situated some distance from the mill.[6] That amendment provided that no additional charge should be made for transportation from the mill to the mill tank or between mills of the same company, except that a purchaser from the mill might on resale add to his price transportation charges from the mill or mill tank to the point of delivery to his buyer. It is plain that if the regulation contemplated only such tanks as might be situated adjacent to the mill, the provision in the amendment excluding from the mill price ceiling of 13.6 cents charges for transportation from the mill to the mill tank would be without meaning, since there would be no such transportation between the mill and such tanks. And the language "or mill tank" used in the provision allowing the mill's

[6] The Statement of Considerations which accompanied Amendment 45 when it was issued shows that Section 65 (b) was intended to apply to "sales by the mill", thereby indicating a clear intent to reach mills operating as business entities rather than as merely places of manufacture. The text of the statement reads as follows:

"Section 65 on molasses has been amended to make it clear that on sales by the mill no extra amount may be charged for warehousing, handling, transportation from mill to mill tank or between mills of the same company. It has been provided that on resale of molasses purchased from a mill the seller may add the actual transportation charges incurred by him in transporting from the mill to the point at which the buyer receives delivery."

purchaser an extra charge for transportation from the "mill tank" to the point where its buyer took delivery would likewise be nugatory, if, under the regulation, the term "mill tank" was intended to be restricted to tanks situated immediately adjacent to the mill. In the circumstances, the court below was clearly correct in declining to place on the amendment to the regulation a construction which would leave its language meaningless and without effect.[7]

3. Petitioner is not protected from liability by Section 205 (d) of the Act, *infra,* pp. 17–18, because it entered into the contract before the promulgation of Section 65 (b) of RMPR 183. The liability imposed here is not imposed because of it entering into the contract, but rather because it delivered its commodity after the regulation was promulgated and at a price which was in violation of that regulation. The protection granted by Section 205 (d) is effective only where the act giving rise to liability was done pursuant to a regulation. Here, the liability is based squarely on a violation of the existing regulation, and not on something done pursuant to it. *Bowles* v. *Franceschini,* 145 F. 2d 510, 513 (C. C.

[7] *Fleming* v. *Ashbaugh*, 158 F. 2d 826 (C. C. A. 9), cited by the petitioner is clearly distinguishable. In that case, the goods had already been placed on railroad cars and delivery made at an undisclosed distance from the point of shipment. Here, the petitioner owned and controlled the Penoncillo tank and customarily used it as an immediate recipient for its molasses in connection with the operation of its mill.

A. 1); *Star Steel Supply Co.* v. *Bowles,* 159 F. 2d 812, 817 (C. C. A. 6).

Nor is the petitioner entitled to relief under the July 25, 1946 amendment to Section 205 (e), *infra,* pp. 18–20. That amendment directs the abandonment by the Administrator of any claim or suit where the violation arose because the person selling the commodity acted upon and in accordance with the written advice and instructions of the Administrator or any regional administrator or district officer of the Office of Price Administration. The amendment is plainly not applicable here, because (1) the violation upon which the action rests is the delivery of the commodity, and not the contract of sale; (2) the advice upon which the petitioner claims to have relied when it made the contract, was given in February 1944, two and one-half months before molasses was brought under the specific dollar-and-cents ceiling established by Section 65 (b) of RMPR 183 on May 4, 1944, and of which the Puerto Rico price administration representatives could not have had any knowledge in February 1944, and (3) the advice given did not emanate from any of the officials designated in the July 25, 1946 amendment to Section 205 (e). (R. 26.) See *Kessler* v. *Fleming,* 163 F. 2d 464, 466 (C. C. A. 9).

The contention of the petitioner that the *colonos* (sugar-cane growers) were indispensable

parties to this suit because they had some interest in the proceeds of the molasses, wholly misconceives the exclusive statutory character of a suit for damages brought under the Emergency Price Control Act. The purpose of the suit is not to adjudicate the rights of those claiming an interest in the commodity or in the proceeds of the sale. It lies only against those who sell a commodity in violation of a price regulation. See Section 205 (e), *infra*, pp. 18–20; *Bowles* v. *Villari*, 61 F. Supp. 784, 792 (E. D. Pa.), affirmed, 156 F. 2d 690 (C. C. A. 3); *Bowles* v. *Brookside Distilling Products Corp.*, 60 F. Supp. 16 (M. D. Pa.). Here, the *colonos* did not sell the commodity, and they are not named or otherwise mentioned in the contract. Consequently, they are not necessary parties to the suit. Furthermore, the petitioner made no application to the trial court to have the *colonos* joined as parties to the suit, as it should have done if it desired to litigate the issue. See Rule 21, F. R. Civil Procedure.

The petitioner also contends obliquely that the court below encroached upon the discretion of the trial court with respect to its decision imposing single damages only (Pet. 7–8). The court below, however, merely directed the trial court to reconsider its decision on that point in the light of all of the relevant evidence, and it is clear that its order was not intended to interfere with the discretion of the trial court in making a final decision on that question.

CONCLUSION

The decision of the court below is correct, and there are no conflicts of decision.

It is respectfully submitted that the petition for certiorari should be denied.

PHILIP B. PERLMAN,
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JOHN R. BENNEY,
Attorney.

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Special Assistant to the Solicitor,
Department of Agriculture.

NOVEMBER 1947.

APPENDIX A

STATUTE

Pertinent provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944 and the Price Control Extension Act of 1946 (56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*):

> SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.
>
> * * * * *
>
> SEC. 205. (d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of

the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. * * *

* * * * *

SEC. 205. (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may,[1] *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection,*[2] *the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is*[3] *greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the*

[1] Remainder of subsec. (e) amended by sec. 108 (b) of the Stabilization Extension Act of 1944. Originally read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[2] As amended by sec. 12 (a) of the Price Control Extension Act of 1946. Previously read, in place of bold-faced language: "In such action."

[3] As amended by sec. 12 (a) of the Price Control Extension Act of 1946, deleting "the" at this point.

court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges[4] *if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.*

For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.*[5] If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection*

[4] As amended by sec. 12 (a) of the Price Control Extension Act of 1946, deleting "or $25, whichever is greater" at this point.

[5] Added by sec. 108 (b) of the Stabilization Extension Act of 1944.

shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.[6]

The Administrator may not institute any action under this subsection on behalf of the United States, or, if such action has been instituted, the Administrator shall withdraw the same—

(1) if the violation arose because the person selling the commodity acted upon and in accordance with the written advice and instructions of the Administrator or any regional administrator or district director of the Office of Price Administration; or

(2) if the violation arose out of the sale of a commodity to any agency of the Government, or to any public housing authority whose operations are supervised or financed in whole or in part by any agency of the Government, and such sale was made pursuant to the lowest bid made in response to an invitation for competitive bids.[7]

* * * * *

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[6] As amended by sec. 108 (b) of the Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

[7] Last three paragraphs added by Price Control Extension Act of 1946.

General Maximum Price Regulation Issued April 28, 1942 (7 F. R. 3153), as amended by Amendment No. 7, June 19, 1942 (7 F. R. 4659)

§ 1499.21, *Effect of Other Price Regulations.* Sections 1499.13, 1499.14, 1499.15, 1499.16, and 1499.25 of this General Maximum Price Regulation shall apply but the other provisions of this General Maximum Price Regulation shall not apply to any sale or delivery for which a maximum price is in effect, at the time of such sale or delivery, under the provisions of any other price regulation issued, or which may be issued, by the Office of Price Administration, unless otherwise provided in any such price regulation.

Pertinent Provisions of Revised Maximum Price Regulation No. 183, as amended (8 F. R. 9532, 9534; 9 F. R. 4821).

SEC. 1. *Prohibition against dealing in certain commodities at prices above the maximum.* Regardless of any contract, agreement, lease, or other obligation or of any price regulation or order heretofore issued by the Office of Price Administration, no person to whom this regulation is applicable shall sell or deliver and no person in the course of trade or business shall buy or receive in the Territory of Puerto Rico any of the commodities set forth in this regulation at a price higher than the maximum prices specified herein; and no person shall offer, solicit or attempt to do any of the foregoing.

SEC. 17. *Definitions.* (a) * * * (3) "To deliver" means to transfer actual possession of the commodity to the purchaser or to any carrier, including a carrier owned or controlled by the seller for shipment to the purchaser.

SEC. 65 (b). On or after May 9, 1944, the maximum price for molasses shall be 13.6¢ per gallon delivered at the mill.

Sec. 65 (b) of Revised Maximum Price Regulation No. 183, as amended by Amendment No. 45 on July 28, 1944 (9 F. R. 9248)

SEC. 65 (b). The maximum price for cane blackstrap molasses shall be 13.6¢ per gallon delivered at the mill or at the mill tank. This is a gross price to which may be added no additional charges for warehousing, handling, transportation from mill to mill tank, or between mills of the same company, or for any other service or incidents of sale except that a purchaser from a mill may on resale add the actual transportation charges incurred by him in transporting the molasses from the mill or mill tank to the point at which the buyer receives delivery.

APPENDIX B

Contract Entered into Between Mario Mercado E Hijos and Serralles Distillery, Inc.

As party of the first part, Central Rufina, of Mario Mercado e Hijos, of Guayanilla, represented by its Acting Manager, Mr. Pastor S. Mandry, and as party of the second part, Destileria Serralles, Inc., represented by its treasurer, Mr. Felix J. Serralles, and its Manager, Mr. Felix R. Hilera, agree:

1. Central Rufiná of Mario Mercado e Hijos, hereby sells to Destileria Serralles, Inc., the molasses produced by it during the 1943–44 grinding season which is estimated in an amount of 1,200,000 gallons more or less, or whatever quantity in excess of this amount which the Seller may have for sale, and which molasses should contain a brix of 85 and a total sugars of 52%. Said molasses becomes the property of the Buyer as soon as produced by the seller, total gallonage to be determined on a basis of 12 pounds of molasses to each gallon.

2. The price of the molasses shall be 17 cents per gallon, based on today's date, March 3, 1944; but will be subject to readjustment if it shall be so determined after this date by the Defense Supply Corporation, the Office of Price Administration, or any other Government agency, Insular or Federal, having jurisdiction over the molasses.

3. Delivery shall be made from June to December 15, 1944, and the Buyer binds itself to take away the total amount of molasses from the tanks of the Seller before

the commencement of the 1944–45 grinding season should the latter commence before December 15. However, it is hereby set forth that at present the Seller has 200,000 gallons of molasses in its tanks, which molasses is hereby transferred to the Buyer immediately, under the same conditions agreed upon above and those which are hereinafter set forth.

4. Said molasses shall be insured by and for the benefit of the Buyer, Destileria Serralles, Inc.

5. Notwithstanding what has been set forth in paragraph 1, the seller, Mario Mercado e Hijos, does not sell 150,000 gallons of molasses which it retains for its own necessities.

6. The Buyer shall take the molasses in the tanks of the Seller, at Rufina Central, at Guayanilla, or at Penoncillo, weighed on the scales of the Seller.

7. In connection with this sale of molasses partial monthly payments to the Seller by the Buyer will be made for the quantity of molasses reported by the seller to have been placed in its tanks for the buyer. Such partial payments made on account shall be readjusted at the termination of the removal of the molasses by the Buyer. The total quantity of molasses delivered by the Seller to the Buyer shall be the basis for the final liquidation.

Ponce, Puerto Rico, March 3, 1944.

MARIO MERCADO E HIJOS,
(Signed) PASTOR S. MANDRY,
Acting Manager.
SERRALLES DISTILLERY, INC.,
(Signed) FELIX J. SERRALLES,
Treasurer.
(Signed) FELIX R. HILERA,
Manager.

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